

CAPCOA Topics for November Meeting

- 1. Revisions to the Petition Provisions of the Title V Permitting Program.** This proposal identifies mandatory guidelines on the substance and format of title V petitions submitted to the Agency as well as requirements for the electronic submittal of title V petitions by the specific method identified in the rule. It sets forth a more detailed process for the EPA review of title V petitions, next steps following the EPA action on a petition, and mandated minimum contents of a petition. In addition, the proposal may provide a greater level of engagement with state and local permitting authorities concerning the EPA's review of a petition regarding state and local title V permits. FR publication August 24, 2016 (81 FR 57822). Comment period closes October 24, 2016. (30 comments received)
- 2. Draft Ozone and PM_{2.5} Significant Impact Level (SILs) Guidance for PSD Program.** The draft guidance establishes a SIL for ozone and re-establishes SILs for PM_{2.5}. These SILs can facilitate implementation by providing a possible compliance demonstration tool for each form of the PM_{2.5} standard and the 8-hour ozone standard in attainment and unclassifiable areas. The draft guidance has been posted on a NSR website (<https://www.epa.gov/nsr/forms/significant-impact-levels-ozone-and-fine-particles-prevention-significant-deterioration>) for a 60 day informal comment period (from August 1st – September 30, 2016). Final guidance is expected by fall 2016.
- 3. Establishment of Significant Emission Rate (SER) for Greenhouse Gases under the PSD Permitting Program and Revisions to the Tailoring Rule Provisions.** This proposal revises provisions applicable to GHG in the PSD and title V permitting regulations. This action is in response to the June 23, 2014, Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Amended Judgment by the D.C. Circuit in *Coalition for Responsible Regulation v. EPA*. The proposed PSD and title V revisions involve changes to several regulatory definitions in the PSD and title V regulations, revisions to the PSD provisions on GHG PALs, and revisions to other provisions necessary to ensure that neither the PSD nor title V rules require a source to obtain a permit solely because the source emits, or has the PTE, GHGs above the applicable thresholds. In addition, the EPA is also proposing a SER for GHGs under the PSD program that would establish an appropriate threshold level below which BACT is not required for a source's GHG emissions. Proposal signed on August 26, 2016.
- 4. Revisions to Public Notice Requirements for Clean Air Act Permitting Programs.** The rule will revise the public noticing rule provisions for the Title V, NSR and OCS permit programs. The rule will remove the mandatory requirement for a permitting authority to provide notice of a permitting action through publication in a newspaper and to instead provide for noticing of permits electronically on agency websites (i.e., electronic notice, or "e-notice"). The rule will describe what is required to provide electronic notice of a proposed permit action as well as electronic access to the draft permit. Proposed rule signed December 21, 2015. Final rule was signed on October 5, 2016.

- 5. Removal of Title V Emergency Affirmative Defense Provisions.** This rulemaking is being conducted in order to remove the “emergency provisions” from both sets of Title V implementing regulations: 40 CFR 70 (State Operating Permit Programs) and 40 CFR 71 (Federal Operating Permit Programs). The regulations for the title V permitting program currently provide for an affirmative defense to actions brought for noncompliance with technology-based emission limits that result from an alleged emergency. The emergency provisions are legally vulnerable as explained in D.C. Circuit decisions and in detail as part of the SSM SIP Call final action; this rule is essentially a follow-up to the SSM SIP Call. In addition to removing these provisions from our regulations, this action will require some implementation actions relating to state permitting programs and individual title V permits that contain similar provisions. Published in the Federal Register on June 14, 2016, 81 FR 38645. Final rule planned for December 2016.
- 6. Creosote-treated railroad ties in biomass-only boilers.** Updates to the Non-Hazardous Secondary Materials (NHSM) Rule added creosote-treated railroad ties to the list of categorical NHSM when used as a fuel in some boilers designed to burn both biomass and fuel oil or natural gas as a part of normal operations. However, biomass-only boilers that burn creosote-treated railroad ties would be considered solid waste incinerators subject to Section 129 of the Clean Air Act. Any title V permits for biomass-only boilers currently permitted to burn creosote-treated railroad ties needs to be revised accordingly. See the changes to the Rule codified at 40 CFR 241.4. Final rule published in the Federal Register on February 8, 2016, 81 FR 6687.
- 7. Minor NSR General Permit for Gasoline Dispensing Facilities in Indian Country within California.** This action proposed a general permit available to qualifying new and modified minor source gasoline dispensing facilities in Indian Country within California. The general permit will require the installation of Stage (Phase) II Enhanced Vapor Recovery and In-Station Diagnostics in ozone nonattainment areas, as well as some other requirements similar to those required throughout the state of California. The permit was proposed on September 30, 2016 and will be available for public comment until November 30, 2016. <https://www.epa.gov/caa-permitting/california-tribal-gasoline-permits>
- 8. Air Curtain Incinerator Updated Emission Factors.** We are working with EPA Headquarters to finalize a report containing updated emission factors for air curtain incinerators that burn vegetative debris. The testing was completed during the recovery efforts following Hurricane Katrina. We will update CAPCOA on these new emission factors once the report is finalized.
- 9. Ninth Circuit Court Decision regarding Sierra Pacific Industries (SPI-Anderson), Shasta County, CA.** On September 2, 2016, the Ninth Circuit Court of Appeals issued a decision regarding the final Prevention of Significant Deterioration (PSD) permit decision issued by the EPA on April 25, 2014 for the SPI-Anderson facility, an existing lumber mill and cogeneration facility in Shasta County. The court denied both petitions for review filed by the Center for Biological Diversity (CBD) and Helping Hand Tools. Regarding CBD’s petition claiming that EPA’s best available control technology (BACT)

determination for greenhouse gas emissions (GHGs) failed to consider whether other biomass fuel sources identified by SPI-Anderson might be considered “clean fuels,” the court found the EPA’s GHG BACT analysis was reasonable. Regarding Helping Hand Tools’ petition claiming that the EPA’s BACT determination for criteria pollutants failed to consider altering the facility’s biomass-natural gas fuel mix to include more “clean fuel” or solar energy to minimize emissions, the court held that the EPA did not act arbitrarily or capriciously here in rejecting more natural gas use or solar power. Earlier this month, CBD and HHT have both petitioned for rehearing of the Court’s decision.

- 10. Next Gen in Air Permits.** The EPA Next Gen National Workgroup has asked each region to prepare a workplan on how they plan to incorporate Next Gen concepts into the design of their air permits program in the 2017 fiscal year. The idea is to incorporate Next Generation technology into air permits to improve the tools used to demonstrate compliance, monitoring, and reporting requirements. Some examples include requiring: fence line monitoring, leak detection systems for baghouses; electronic portals for reporting real time air emissions data; Infrared (IR) cameras for monitoring air emissions data; third-party inspections (auditors) and report preparation; and electronic reporting (e-reporting) using an EPA CROMERR-approved electronic reporting system such as Central Data Exchange/Compliance and Emissions Data Reporting Interface (CDX/CEDRI). Each region is required to describe how they plan to accomplish these goals. One important aspect of reaching the regional goals is by capacity building with state/local/tribal air agency partners, as well as incorporating Next Gen into any agency-issued air permits. The workplans are due in October 2016.
- 11. CEDRI Training for state/local/tribal agencies.** Several of the new regulations under the NESHAP and NSR programs have requirements for companies to submit their reports to EPA electronically through the EPA CDX/CEDRI system. Since the companies are required to submit the reports electronically, the state/local/tribal agencies are required to review and approve the electronic reports in the CDX/CEDRI system within 60 days of receipt, before the reports are available for public review. Unfortunately, the state/local/tribal agencies have not been reviewing and approval the electronic reports, mainly due to a lack of training on how to use the CDX/CEDRI system. EPA is aware of the problem and is currently developing a training program for the agencies. The training program will be held through a Web Based classroom using the EPA Webinar training system. The training will be conducted by the EPA CEDRI Office out of EPA Headquarters (HQ) and will be hosted and coordinated through each regional office. Region 9 is planning to host the training for our local agencies in the first quarter of 2017.
- 12. Bay Area Air Quality Management District NSR Rule Revisions.** On August 1, 2016, the EPA issued a limited approval and limited disapproval of revisions to the Bay Area Air Quality Management District’s (BAAQMD or District) New Source Review (NSR) rules under the California State Implementation Plan (SIP). The final NSR rules became effective on August 31, 2016. These revisions consisted of significant updates and new requirements governing the issuance of Prevention of Significant Deterioration (PSD), nonattainment NSR, and minor NSR permits. The EPA’s “limited approval”

approves the District's NSR rules, and the "limited disapproval" directs the District to correct the deficiencies that are the bases for the limited disapproval and obtain EPA approval within 18 months of the effective date of the final action. If the limited approval issues are not adequately addressed within 18 months, sanctions (under section 179 of the Act and 40 CFR 52.31) will be imposed.

On September 30, 2016, the BAAQMD submitted a petition for reconsideration and request for stay of the final rule. On October 6, 2016, the District submitted an amended petition. The BAAQMD, in its petition, requested the EPA to reconsider our limited disapproval regarding the conclusion that sulfur dioxide (SO₂) must be regulated as a precursor to PM_{2.5} formation, and therefore major sources of SO₂ must be subject to nonattainment NSR. The BAAQMD requested that the EPA stay the effectiveness of the final rule during the reconsideration of the SO₂ issue for up to three (3) months. Additionally, the BAAQMD requested that the EPA stay the effectiveness of the limited disapproval regarding the SO₂ issue so that the District may pursue a petition for review in the Ninth Circuit Court of Appeals with respect to other objections to the EPA's position that the District raised during the public comment period on the limited disapproval.

- 13. FLM Notification.** New FLM notification guidance, still waiting on OAQPS to brief Anna Wood. Pinal definitely need to do this for the SRP Copper Crossing project.
- 14. Hickman Egg Farm.** Enforcement division is still reviewing the response to its section 114 request, deciding on the next steps.
- 15. Fluidic, Inc.** New Tribal Minor NSR application for a true minor source located in Scottsdale, AZ, on the Salt River Pima-Maricopa Indian Community. It is a metal-air battery manufacturing process that emits VOCs. Region 9 issued a second deficiency letter October 12, 2016, requesting the applicant to consider Maricopa County APCD's local requirements, specifically the BACT analysis requirement. Still waiting for the facility to respond.
- 16. Western Emulsion.** Asphalt terminal located near Coolidge, Arizona.